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No. 98-231

In the Supreme Court of the United States

OCTOBER TERM, 1998

GRUPO MEXICANO DE DESARROLLO, S.A., ET. AL.,
PETITIONERS

v.

ALLIANCE BOND FUND, INC., ET. AL.
RESPONDENTS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF AMICI CURIAE THE SECURITIES INDUSTRY ASSOCIATION AND THE EMERGING MARKETS TRADERS ASSOCIATION IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether, in an action for money damages, principles of international comity deprive a federal court of the power, under any and all circumstances, to enjoin a foreign company that has sold securities in the United States from dissipating its assets in order to frustrate the enforceability of a judgment.

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INTERESTS OF THE *AMICI CURIAE*[1/]

The Securities Industry Association ("SIA") brings together the shared interests of more than 750 securities firms throughout North America. SIA members — including investment banks, broker-dealers, specialists, and mutual fund companies — are active in all markets and in all phases of corporate and public finance. In the United States, SIA members employ approximately 400,000 individuals. SIA member firms manage the accounts of more than 50 million investors directly, and tens of millions of investors indirectly, through corporate, thrift, and pension plans. The U.S. securities industry accounts for $270 billion of revenues in the U.S. economy.

The Emerging Markets Traders Association ("EMTA") is a New York based not-for-profit organization that promotes greater efficiency, professionalism and transparency in the trading of emerging markets debt instruments. EMTA was formed in 1990 by a group of global financial institutions in response to the new trading opportunities presented by the Brady Plan, a United States policy relating to debt obligations owed by foreign sovereigns. EMTA now has approximately 140 member institutions worldwide, including substantially all of the major commercial and investment banks that actively trade emerging markets debt instruments in the secondary markets.

[1/] The parties have consented to the filing of this *amicus curiae* brief and letters indicating their consent have been filed with the Clerk of the Court. No party, nor any party's counsel, authored any part of this brief nor has any person or entity other than the *amici curiae* made a monetary contribution to the preparation and submission of this brief. Several respondents or their affiliates or officers are members of the Securities Industry Association and/or the Emerging Markets Traders Association.

SIA and EMTA submit this *amicus curiae* brief to assist the Court in determining whether Federal Rule of Civil Procedure 65 permits a district court in an action for money damages to enjoin a party from disposing of assets so as to frustrate an eventual judgment. This *amicus* brief will focus on this question in the specific context of international capital markets transactions like the one involved in the present case. The wealth of experience SIA has acquired in the securities field, and in international securities transactions in particular, and EMTA's extensive knowledge and interest in foreign debt transactions render the associations uniquely qualified to provide the Court with information and comment relevant to this topic.

INTRODUCTION AND SUMMARY OF ARGUMENT

The purpose of this *amicus* brief is to demonstrate the following two points:

1. The rule proposed by petitioners, that a federal court in an action at law for money damages lacks power to enjoin a defendant's dissipation of assets, would, if adopted, do serious harm to global capital markets and to United States investors in those markets. Investments by United States citizens in equity and debt offerings by foreign issuers are of growing importance to this country and to the world. To deprive United States investors of the kind of remedy granted here would increase the risk and cost associated with such transactions and would create a serious disincentive to investments in entities whose assets are overseas. Indeed, reversal of the decision below would often leave some creditors with no effective remedy and would render nugatory the contractual protections for which United States investors normally bargain. The need for injunctive relief to prevent the dissipation of assets in a proper case has been recognized by English and other courts for sound reasons that justify taking a similar approach in this country.

2. The considerations of international comity discussed in the *amicus curiae* brief of the Dominican Republic furnish no reason for adopting the law-equity distinction that petitioners advocate. The issue here is the *power* to issue an injunction; considerations of comity bear only on whether such an injunction should be issued in a particular case. Comity can and should be taken into account, together with all other equitable considerations, when an injunction against the dissipation of assets is sought. Here, the district judge properly weighed comity as well as other factors, and reached a correct result.

ARGUMENT

I. THE RULE PETITIONERS PROPOSE WOULD DO SERIOUS HARM TO THE GLOBAL MARKETPLACE AND TO UNITED STATES INVESTORS.

Petitioners' argument is, in essence, that Rules 64 and 65 of the Federal Rules of Civil Procedure codify the ancient distinction between law and equity, and thus prohibit the use of an injunctive remedy to prevent dissipation of the defendant's assets in an action at law. Such an injunction, petitioners contend, may be issued only "when a plaintiff, in an action for equitable relief, seeks an injunction with respect to the same *res* or thing that is the subject of its underlying claim." Brief for Petitioners at 10. Petitioners say that because this action, which seeks damages for breach of contract, would historically have been classified as legal rather than equitable, only attachment and other traditional common-law means of securing satisfaction of a judgment can be employed. The Second Circuit's opinion contains a well-considered analysis of the text and history of Rules 64 and 65, as well as of the decisions of this Court and lower-court precedents that refute petitioners' theory of an impenetrable barrier between law and equity.

Because these issues will doubtless be discussed in detail in respondents' brief, this *amicus* brief will focus on the policy considerations that also support respondents' position in this case. If this Court should decide, as petitioners ask, that the equitable powers of a federal district judge do not, in the relevant respect, exceed the powers of a medieval Chancellor, the consequences would be most unfortunate for today's global marketplace and United States participants in it.

The importance of international capital transactions in which foreign entities raise capital in the United States securities markets is enormous. In 1997, non-United States issuers registered over $100 billion in securities for public offering in the United States. More than 1,000 companies from 55 countries had SEC reporting obligations in the United States by the end of 1997, the last year for which statistics are available. Mark S. Bergman, *1999 Capital Markets Yearbook,* 24 *(published by the International Financial Law Review).*

But foreign registrants represent only a small portion of foreign equity trading. In 1997, the value of global equity trading hit $19.5 trillion, a 43% increase over the record $13.6 trillion traded in 1996; markets in the United States accounted for 52.4% of that trading. *See* 1998 Securities Industry Association Fact Book, 75 (1998). Moreover, gross sales of foreign bonds by foreigners to U.S. residents exceeded $1.999 trillion and gross sales of foreign stocks and bonds together exceeded $2.295 trillion. *See* Department of the Treasury, Financial Management Service, Treasury Bulletin, 94-95, Table CM-V-5 (December 1998). Over $15.6 billion in Mexican bonds alone were sold to residents of the United States in 1997. *See id.* Between 1994 and 1997, United States residents increased their net purchases (purchases minus sales) of foreign bonds by 422%. *See id.* at 96, Chart CM-D.

The growth in international capital transactions has brought and continues to bring enormous benefits to United States investors and to people all over the world. For investors in this country, of course, this trend has given rise to greater opportunities for diversification and higher yields than are available through instruments sold exclusively by United States issuers. From the foreign issuers' perspective, in many countries, including those lately emerged or still emerging from conditions of dire poverty, capital for development is now

available on an unprecedented scale. The home countries of issuers that are now benefiting from access to the United States' capital markets include Colombia, Malaysia, Lebanon, Liberia, Zaire and Syria. *See* Department of the Treasury, Financial Management Service, Treasury Bulletin, 92-93, Table CM-V-4 (December 1998)[2/] It is surely in the interests of both the United States and the developing world to foster the growth of these markets by assuring that participants in them have the benefit of modern and effective legal remedies.

Today's international capital markets are extraordinarily "efficient" in two senses of the term. First, they are efficient in the speed at which transactions can be accomplished. Literally billions of dollars can be moved from one country to another almost instantaneously, by computer transmission. The markets are also "efficient" in their assessment of information relevant to risk. *Cf. Basic Incorporated v. Levinson*, 485 U.S. 224, 246-47 & n.24 (1988) (recognizing that "[r]ecent empirical studies have tended to confirm Congress' premise that the market price of shares traded on well developed markets reflects all publicly available information"). Investors calculate their risks with great precision, and insist on a return on investment that compensates them for that risk. This means that anything that needlessly

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[2/] The list of emerging market countries whose nationals have sold securities in the United States in 1997 alone includes: Argentina, Bahamas, Bermuda, Bosnia, Brazil, British West Indies, Bulgaria, Chile, Columbia, Croatia, Czech Republic, Ecuador, Egypt, Ghana, Guatemala, Herzegovina, Hungary, Indonesia, Israel, Jamaica, Lebanon, Liberia, Malaysia, Mexico, Montenegro, Morocco, Netherlands Antilles, Palestine, Panama, People's Republic of China, Peru, Philippines, Poland, Romania, Russia, Serbia, Singapore, Slovenia, Syria, Thailand, Trinidad and Tobago, Turkey, Uruguay, Venezuela, and Zaire. *See* Department of the Treasury, Office of Financial Management, Treasury Bulletin, 92-93, Table CM-V-4 (December 1998).

increases investors' risks increases the cost of raising money in the United States capital markets and makes it that much more difficult for those markets to perform their function.

The power of courts in the United States to grant injunctive relief against the dissipation of any assets, wherever located, is an important underpinning of the legal regime in which international capital markets operate. The situation that the District Judge in this case sought to remedy — the choice by an insolvent Mexican entity to pay its Mexican creditors while leaving its obligations to United States citizens unpaid — is certainly not an every-day occurrence. But the *risk* of such conduct for potential investors in the equity or debt securities of a foreign issuer is palpable and must be factored into every transaction.

When a foreign issuer does default and then dissipates its assets, petitioners concede that attachment and similar remedies will generally be useless, since the debtor's assets will be located in foreign countries, or can be moved to foreign countries in a matter of seconds. And when the debtor and its assets are outside the country, the United States bankruptcy laws are not effective to prevent discrimination among creditors, as they are in disputes with United States parties on both sides.

Even sophisticated investors cannot adequately protect themselves through contract. After all, here respondents were induced to invest through promises by the issuer to submit to the personal jurisdiction of the United States courts and to treat the United States investors on a *pari passu* basis with its unsecured home country creditors. *See Alliance Bond Fund, Inc. v. Grupo Mexicano de Desarrollo, S.A.*, 143 F.3d 688, 691 (2d Cir. 1998); *see also* Joint Appendix ("J.A.") 12, 90. Yet such contractual provisions would prove completely unavailing against any financially beleaguered foreign issuer which, out of

dishonesty or by virtue of local political and economic pressures, decides systematically to favor local creditors. When the problem of discrimination in favor of the debtor's home-country creditors arises, it can be dealt with effectively only by the sort of injunctive relief that the District Court granted.

If this Court were to conclude that the narrowly-tailored remedy fashioned by the District Court here is never available, on any set of facts, to United States investors, some investors will conclude that overseas investment is imprudent, and many will demand a higher rate of return to compensate for the increased risk of uncollectibility. This will foreseeably curtail—and in some cases altogether deny—access to the United States capital markets by foreign issuers on reasonable economic terms.

The practical importance of this kind of injunctive relief is reflected in the development over the last twenty years of the so-called *Mareva* injunction in England and other countries of the British Commonwealth. In *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.*, [1975] 2 Lloyd's Rep. 509 (C.A.), the Court of Appeals of England held:

> If it appears that the debt is due and owing -- and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment -- the Court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets.

Mareva, 2 Lloyd's Rep. at 510.

Although initially *Mareva* injunctions were available only for assets located within the court's jurisdiction, the English courts later recognized that, since an injunction is premised on

in personam and not *in rem* jurisdiction, the *Mareva* holding is equally applicable to prevent dissipation of assets located outside the country. *See, e.g., Derby & Co. v. Weldon*, [1989] 1 All Eng. Rep. 1002, 1011 (C.A.); *Orwell Steel (Erection and Fabrication) Ltd v. Asphalt and Tarmac (U.K.) Ltd*, [1984] 1 W.L.R. 1097, 1100 (Q.B.D.); *The Tuyuti*, [1984] 2 Lloyd's L.R. 51, 56 (C.A.).

Courts in Commonwealth countries other than England have followed England's lead in adopting the *Mareva*-type injunction. *See, e.g., Natural Gas Corp. Holdings Ltd v. Grant*, [1994] 2 N.Z.L.R. 252 (H.C. Auckland) (New Zealand court noting in dicta that *Mareva* injunction having "world-wide" effect was properly issued); *Mooney v. Orr*, [1994] 1994 ACWSJ LEXIS 10688, *3 (B.C. Sup. Ct.) (Canadian court noting that "defendants obtained a world-wide *Mareva* injunction . . ." in deciding issue relating to whether the court had power to order certain disclosures); *Nat'l Australia Bank Ltd v. Bond Brewing Holdings Ltd*, [1991] 1 V.R. 386 (Victoria App. Div.) (Australian court issuing a *Mareva* injunction and appointing a receiver over foreign assets); *James v. Merrill Lynch Internat'l Bank Ltd*, [1998] 1 S.L.R. 785 (C.A.) (Singapore court noting that a "world-wide" *Mareva* injunction had been obtained in both Singapore and Hong Kong and appointing receiver over foreign assets); *see also* Mealey's International Arb. Report, Vol. 9, No. 9 (Sept. 1992) (reporting issuance of *Mareva* injunction in Hong Kong arbitration).

Thus, the courts of the country in which the distinction between law and equity originated have taken the lead in recognizing that the general principles of equity jurisdiction, not the ancient boundary between legal and equitable cases, should govern the issuance of an injunction. The standard for issuing *Mareva* injunctions in England is not a technical one, but incorporates the same equitable principles familiar to United

States judges in dealing with applications for injunctive relief. The *Mareva* standard is summarized in a leading treatise as follows:

> (1) whether the plaintiff has a good arguable case;
>
> (2) whether the plaintiff can adduce sufficient evidence as to the existence and location of assets which the injunction, if made, would affect; and
>
> (3) whether there is a real risk that the defendant may deal with those assets so as to render nugatory any judgment which the plaintiff may obtain.

J. O'Hare and R. Hill, *Civil Litigation*, 296 (8th ed. 1997).

The development of the *Mareva* injunction was founded in part on a recognition that it is suited to the needs of participants in modern business transactions. As the English Court of Appeals stated:

> We live in a time of rapidly growing commercial and financial sophistication and it behooves the courts to adapt their practices to meet the current wiles of those defendants who are prepared to devote as much energy to making themselves immune to the courts orders as to resisting the making of such orders on the merits of their case.

Derby, 1 All Eng. Rep. at 1007.

The position of the petitioners in this case is that the Federal Rules of Civil Procedure deprive United States District Courts of the flexibility to "adapt their practices" to this era of "rapidly growing commercial and financial sophistication." But

the rules can not fairly be read to impose any such strait jacket on United States District Courts. If the rules were so read, the result would be a significant adverse impact on international global markets and on the participation of United States investors in those markets.

II. THE COMITY CONSIDERATIONS STRESSED BY THE DOMINICAN REPUBLIC FURNISH NO REASON FOR ADOPTING THE RULE PETITIONERS SEEK

A. The Issue in this Case is the Existence of Power, not its Exercise.

The *amicus* brief of the Dominican Republic argues that a result in favor of respondents here would violate principles of international comity — a contention not raised by petitioners either in the District Court or in the Court of Appeals. This argument is based on a misunderstanding of the issue before this Court, which is simply whether the Federal Rules of Civil Procedure authorize a District Judge to issue an injunction like the one entered in this case. If a District Judge has power to issue such an injunction, principles of international comity may, in some cases, cause him or her to refrain from *exercising* that power. But principles of international comity cannot rationally support a holding that the power does not exist.

The legal issue of a District Court's *power* to issue an injunction against the dissipation of assets in an action for money damages is the same whether the dispute is international or not. To be sure, such injunctions are especially important to the predictability and efficiency of international business transactions. But if petitioners' theory is upheld, a District Judge sitting in New York could not issue such an injunction even where the defendant is a United States citizen and the asset in question is a bank account in Delaware. Indeed, most of the prior Court of

Appeals cases considering this question involved transactions and assets within the United States.[y] It would be strange indeed if considerations of international comity disabled a District Court from issuing this kind of injunction in such purely domestic disputes.

The Dominican Republic appears to suggest that the issue of a District Court's power to enter an injunction may turn on whether the dispute is a domestic or international one — *i.e.*, that Rules 64 and 65 of the Federal Rules of Civil Procedure should be read to prohibit injunctions against dissipation of assets in international cases, whether or not they are so read in a domestic context. Such a distinction is without any support in the language of the rules themselves, their legislative history or any decision interpreting them. But beyond that, such a distinction would be both unwise and unnecessary. It would be unwise for the reasons stated in Point I above: It is important to the international capital markets, and to United States participants in those markets, that such a remedy be available where needed. And it is unnecessary because principles of international comity can and will be taken into account by District Courts in deciding

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[y] *See Teradyne, Inc. v. Mostek Corp.*, 797 F.2d 43, 52-53 (1st Cir. 1986); *Roland Machinery Co. v. Dresser Industries, Inc.*, 749 F.2d 380, 386 (7th Cir.1984); *Foltz v. U.S. News & World Report*, 760 F.2d 1300, 1309 (D.C.Cir.1985); *Green v. Drexler* (In re: Feit & Drexler, Inc.), 760 F.2d 406, 416 (2d Cir.1985); *United States ex rel. Taxpayers Against Fraud v. Singer Co.*, 889 F.2d 1327 (4th Cir.1989); *Airlines Reporting Corp. v. Barry*, 825 F.2d 1220, 1227 (8th Cir.1987); *Tri-State Generation and Transmission Ass'n, Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir.1986); *Dixie Carriers, Inc. v. Channel Fueling Service, Inc.* (In re: Fredeman Litigation), 843 F.2d 821, 824 (5th Cir.1988); *Mitsubishi Int'l Corp. v. Cardinal Textile Sales*, 14 F.3d 1507 (11th Cir.1994).

whether to issue injunctions in specific cases, and by Courts of Appeals in reviewing those decisions.

The mere existence of power does not mean that it must be exercised in every case. No one disputes the basic principle, stated in the Dominican Republic's brief, that "the *exercise* of judicial power beyond a court's national boundaries must be constrained by principles of comity." Brief of Amicus Curiae the Dominican Republic in Support of Petitioners ("Dom. Rep. Br.") at 6 (emphasis added). In deciding whether to grant an injunction a court of equity is always constrained by, among other things, the impact that an injunction would have upon the public interest. *See, e.g., University of Texas v. Camenisch*, 451 U.S. 390, 392, 101 S.Ct. 1830, 1832, 68 L.Ed.2d 175 (1981). Among the public interests to be weighed, the principle of comity may be an important one. *Cf. Hoover v. Wagner*, 47 F.3d 845, 850 (7th Cir. 1995) (holding in context of federal/state concerns that "[e]quitable remedies are powerful, and with power comes responsibility for its careful exercise. These remedies can affect nonparties to the litigation in which they are sought; and when, as in this case, they are sought to be applied to officials of one sovereign by the courts of another, they can impair comity, the mutual respect of sovereigns . . ."); *see also Los Angeles v. Lyons*, 461 U.S. 95, 112, 103 S. Ct. 1660, 1670- 71, 75 L.Ed.2d 675 (1983).

Where comity counsels against such an injunction, it should not be issued. As an English court stated in discussing whether to issue a *Mareva* injunction, the essential issue is:

> whether in particular circumstances the grant [of a preliminary injunction] is right or just. What changes is not the power or the principles but the circumstances, both special and general, in which courts are asked to exercise this jurisdiction. This

> can and does call for changes in the practice of the courts.

Derby, 1 All Eng. Rep. at 1007.

Indeed, the very existence of the *Mareva* injunction in England and other countries undermines the Dominican Republic's argument that injunctions against the dissipation of assets in foreign countries are intrinsically an infringement of principles of comity. English and other courts have granted such injunctions in proper cases without noticeable damage to the fabric of international relations. The Court of Appeals in this case noted that it was "impressed" by the English experience of the past twenty years, as supporting the Court of Appeals' conclusion that the "parade of horribles" foretold by petitioners below was unlikely to occur. *Alliance Bond Fund*, 143 F.3d at 696.

The Dominican Republic seeks to brush off the *Mareva* injunction practice in a footnote, stating that the issuance of such injunctions "has been limited to a few extraordinary cases, typically involving fraud." (Dom. Rep. Br. at 21 n.13). This is not an accurate summary of the English practice. As noted above, the English courts base *Mareva* injunctions on traditional equitable principles, and fraud is not an essential element of the required showing, although "a real risk that the defendant may deal with . . . assets so as to render nugatory any judgment" is required. O'Hare and Hill, *Civil Litigation* at 296.

It is quite true, however, that the English courts do not issue *Mareva* injunctions lightly. Indeed, one such Court noted in the course of weighing a *Mareva* injunction:

> Considerations of comity require the courts of this country to refrain from making orders which infringe

the exclusive jurisdiction of the courts of other countries.

Derby, 1 All Eng. Rep. at 1011. Nor do respondents or the *amici* supporting them suggest that District Courts should lightly issue the kind of injunction at issue in this case. We do contend that the District Courts have *power* to issue such injunctions — a contention that the Dominican Republic brief does nothing to refute.

B. *The Injunction Issued in this Case Did Not Violate Principles of Comity.*

As we understand it, the question of whether the particular injunction issued by the District Court here was in violation of principles of comity is not before this Court. This fact-specific issue was not raised below, was not presented by the petition for certiorari, is not the subject of any conflict among the Circuit Courts of Appeal, and would not be an appropriate subject for this Court's discretionary exercise of its powers of review. If the Court should find it appropriate to reach that question, however, it should conclude that the decision of the District Court, affirmed by the Court of Appeals, was well within the District Court's discretion, and that no principle of comity was violated.

Contrary to the picture painted by the Dominican Republic's brief, the District Judge in this case was careful to respect Mexican sovereignty. Indeed, he rejected a suggestion by respondents that a trust be imposed on property located in Mexico, stating that the Court was not prepared "to start running things in Mexico." Petitioners' Appendix 30a, 37-39a. The District Judge required only that the defendants refrain from dealing with their assets in Mexico in such a way as to nullify the effect of a United States judgment. Powerful equitable

considerations supported his decision to grant such relief on the facts of this case:

(1) The defendants, while they are Mexican citizens, chose to raise $250 million through an offering of 8¼% Guaranteed Notes in the United States pursuant to Rule 144A under the Securities Act of 1933. It is well established that a foreign citizen who takes advantage of United States markets must conform its conduct to the dictates of United States law. *See, e.g., Securities and Exchange Commission v. Banca Della Svizzera Italiana*, 92 F.R.D. 111, 117 (S.D.N.Y. 1981) (holding that Swiss corporation could be compelled to comply with discovery even though disclosure violated Swiss law and noting that "[t]he strength of the United States interest in enforcing its securities laws to ensure the integrity of its financial markets cannot seriously be doubted"). *Cf. Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for Southern Dist. of Iowa*, 482 U.S. 522, 544 & n.29, 107 S.Ct. 2542, 2556 & n.29 (1987). This commonly accepted principle applies even in cases, unlike this one, where there is a real tension between United States and foreign law. Thus, foreign defendants can be compelled to make disclosures which they contend would violate the laws of their home countries. *See id.* No such conflict between United States and foreign law arises in this case.

(2) The petitioners expressly submitted themselves—in the instruments by which they raised $250 million—to the jurisdiction of United States courts. Thus, in order to obtain a large infusion of capital, petitioners led respondents to expect that, in any proceeding to enforce petitioners' obligations, respondents would have available to them the same legal remedies that would be available against a domestic borrower. There is no inequity or violation of comity in enforcing that expectation.

(3) Having consented to United States jurisdiction, petitioners committed exactly the sort of act which would lead creditors in respondents' position to insist on invoking United States jurisdiction: Petitioners distributed their assets to Mexican creditors in preference to United States creditors, even though the Mexican and United States claims of unsecured creditors were to have been treated *pari passu*, and even though petitioners had agreed that assets pledged to such other creditors would be ratably pledged to the United States creditors. *See Alliance Bond Fund*, 143 F.3d at 691.

(4) Petitioners affirmatively misled respondents about their dissipation of assets. As the Second Circuit noted, they disclosed for the first time during a hearing before the District Court that they had pledged between $214 and $238 million of the Mexican Government notes to Mexican creditors - not the $117 million they had previously sworn to in an affidavit. *Id.* at 697.

(5) Petitioners made no attempt to invoke bankruptcy or other insolvency laws in Mexico. It may be that, where such laws are invoked, a United States court should ordinarily consider leaving the rights of the parties to adjudication in the foreign forum. Indeed, in at least some instances United States creditors will not want to interfere with foreign bankruptcy proceedings, which may be the best way to assure fair treatment of all creditors. But the District Court's injunction here did not interfere with any foreign proceedings, because there were none. On the contrary, the District Court's order expressly states:

> [N]othing contained herein shall prohibit [GMD] from commencing any insolvency proceedings under applicable law.

J.A. 75, 77

(6) Petitioners acted in bad faith. The District Court was clearly of this view, and the Court of Appeals concurred that petitioners' actions were "less than benign." *Alliance Bond Fund*, 143 F.3d at 697. The Dominican Republic brief simply ignores the factual findings of the courts below, although this Court has stated that such findings should be respected. *See, e.g., Varity Corp. v. Howe*, 516 U.S. 489. 498, 116 S.Ct. 1065, 1071 (1996).

In sum, the District Court and the Court of Appeals for the Second Circuit gave ample deference to the principles of international comity. The injunction issued here was not an abuse of discretion.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

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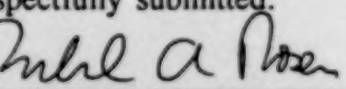
New York, New York

Respectfully submitted:



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